

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

MICHAEL WILLIAM BRAINARD,

Plaintiff,

vs.

CITY OF HUNTINGTON WOODS,

Defendant.

Cause No. CV 19-38-GF-BMM-JTJ

FINDINGS AND
RECOMMENDATION OF U.S.
MAGISTRATE JUDGE

Plaintiff Brainard filed this action on May 28, 2019. His pleading asked the Court to enjoin the City of Huntington Woods, Michigan, from taking any action with respect to Plaintiff's real property in that city.

On October 2, 2019, the Court notified Brainard that the record of the case did not indicate that he had served the complaint on the City. *See* Federal Rule of Civil Procedure 4(m). Brainard had an opportunity to show cause why the action should not be dismissed without prejudice. *See* Order (Doc. 2) at 1. He did not respond to the Order.

Rule 4(m) provides that "[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the

plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Here, Brainard’s failure to respond to the order to show cause weighs in favor of dismissal rather than an extension of time to serve the Defendant City.

Based on the foregoing, the Court enters the following:

RECOMMENDATION

1. The action should be DISMISSED WITHOUT PREJUDICE for failure to serve the complaint on the Defendant within 90 days.
2. The clerk should be directed to enter, by separate document, a judgment of dismissal.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT

Brainard may object to this Findings and Recommendation within 14 days. *See* 28 U.S.C. § 636(b)(1).¹ Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

Brainard must immediately advise the Court of any change in his mailing address. Failure to do so may result in dismissal of this action without notice to

¹ This deadline allows a party to act within 14 days after the Findings and Recommendation is “served.” Federal Rule of Civil Procedure 6(d) allows three additional days after the period would otherwise expire.

him.

DATED this 28th day of October, 2019.

/s/ John Johnston
John Johnston
United States Magistrate Judge